

## Message Text

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PAGE 01 STATE 029622  
ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 JUSE-00 SCA-01 /017 R

DRAFTED BY L/M:KEMALMBORG:AD  
APPROVED BY L/M:KEMALMBORG  
JUSTICE - MR. STEIN (INFO)  
EUR/CE - MR. CASSAGRANDE  
L/T - MR. MCQUADE

-----100632Z 119882 /11

R 092208Z FEB 77  
FM SECSTATE WASHDC  
TO AMEMBASSY BONN

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E.O. 11652: N/A

TAGS: PFOR, OVIP

SUBJECT: EXTRADITION: US/FRG EXTRADITION TREATY

REF: (A) BONN 01925; (B) STATE 295225

1. THIS MESSAGE DEALS ONLY WITH COMMENTS ON EXTRADITION TREATY. WHEN NEW LEGAL ADVISER ON BOARD, HE WILL BE ASKED TO CONSIDER OTHER ASPECTS REFTEL A.
2. JUSTICE DEPARTMENT COMMENTS ON PROPOSED EXTRADITION TREATY REFERRED TO REFTEL B HAVE NOW BEEN RECEIVED AND CONSIDERED. USG COMMENTS ON GERMAN PROPOSALS NOW FOLLOW. COMMENTS KEYED TO BONN A-443, NOVEMBER 17, 1975.
3. ARTICLE 1: WHILE JUSTICE DEPARTMENT IS DISPOSED TO BE FAVORABLE TOWARD BROADER COVERAGE WHICH WOULD RESULT FROM FRG PROPOSALS, WE DO NOT FIND THEM ACCEPTABLE. FIRST,  
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BECAUSE OF ONE-SIDED BENEFITS TO FRG WHICH WOULD RESULT, AND, SECOND, BECAUSE US THEREBY COULD BE PLACED IN POSITION OF SUPPORTING THROUGH EXTRADITION, FRG PRINCIPLES OF JURISDICTION WHICH WE DO NOT RECOGNIZE, E.G. NATIONALITY OF VICTIM OR PRINCIPLE OF UNIVERSALITY. JUSTICE HAS SUGGESTED ALTERNATIVE FORMULATION FOR PARAGRAPH (2) OF "ITS LAWS DO NOT SO PROHIBIT THE PUNISHMENT" BUT THIS DOES NOT AVOID

EITHER OF TWO OBJECTIONS CITED ABOVE, SINCE IT SELDOM WOULD BE A POSITIVE ENACTMENT WHICH IS INVOLVED. EMBASSY SHOULD CONVEY OUR OBJECTIONS TO FRG; JUSTICE VIEWS ARE FOR EMBASSY'S INFORMATION.

4. ARTICLE 2: CHANGE IN PARAGRAPH 2(B) IS ACCEPTABLE.

5. ARTICLE 4: WITH RESPECT TO PARA (2) NUMBER OF RECENT CASES FOCUSSED ON THIS DEFENSE INDICATES THAT IT IS SUBSTANTIVELY DIFFERENT FROM PARA (L). WE TEND TO AGREE THAT IT WOULD BE DIFFICULT TO RELY ON PARA (2) ALONE IN REFUSING EXTRADITION, AND IN MOST TREATIES IT AND PARA (L) ARE COMBINED. ITS DELETION AT THIS STAGE, HOWEVER, WOULD LEAD TO IMPLICATION THAT THIS DEFENSE DOES NOT EXIST, AND WE THEREFORE PREFER ITS RETENTION.

WITH RESPECT TO PARA (3) WE FIND THE REDRAFT ACCEPTABLE. WHILE LANGUAGE IS OPEN-ENDED, SO THAT FUTURE MULTILATERALS WITH OBLIGATION TO PROSECUTE WOULD BE PICKED UP, WE BELIEVE THAT NEGOTIATING HISTORY SHOULD SHOW WHAT CURRENT CONVENTIONS ARE COVERED BY THIS LANGUAGE. IN ADDITION TO GENOCIDE CONVENTION AND CONVENTION FOR THE PROTECTION OF DIPLOMATS, WE WOULD INCLUDE THE HAGUE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT, THE MONTREAL CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION TO WHICH FRG IS NOT A PARTY), AND THE SINGLE CONVENTION ON NARCOTIC DRUGS, AS AMENDED BY THE MARCH 25, 1972 PROTOCOL OF GENEVA. AN LIMITED OFFICIAL USE

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AGREED MINUTE COULD RECORD THIS LIST IN CASE OF LITIGATION LATER ON. NOTE: THERE ARE TWO CASES WHERE NEGOTIATING MINUTES OF ITALIAN NEGOTIATIONS HAVE BEEN PUT IN EVIDENCE.

6. ARTICLE 6: NO OBJECTION TO REDRAFT.

7. AS INDICATED REFTEL B, FRG REDRAFT IS NOT ACCEPTABLE. WE WOULD PREFER ORIGINAL FORMULATION BECAUSE IT GIVES US AUTHORITY TO EXTRADITE OUR OWN NATIONALS WHICH WE WOULD NOT OTHERWISE HAVE. EMBASSY SHOULD ADVISE FRG THAT USG HAS NOT REFUSED EXTRADITION OF US NATIONAL UNDER LANGUAGE SUCH AS ARTICLE 7 SINCE AT LEAST EARLY 1960'S. SINCE JUSTICE DEPARTMENT WOULD REPRESENT FRG, FRG CAN BE SURE THAT USG WOULD NOT LIGHTLY OVERTURN SUCCESSFUL PROCEEDING IN OUR COURTS BY JUSTICE DEPARTMENT. IF FRG CANNOT ACCEPT THAT FORMULATION, WHICH BENEFITS THEM, WE WOULD PREFER SIMPLY DELETING EVERYTHING IN ARTICLE 7(1) AFTER THE FIRST SENTENCE. JURISDICTIONAL PROBLEM IN ARTICLE 1 DESCRIBED

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A-443 IS NOT SOLVED BY THIS CHANGE IN ARTICLE 7 SINCE IT COULD ARISE IN CONNECTION FRG REQUEST FOR EXTRADITION OF PERSONS NEITHER US OR FRG NATIONALS.

8. ARTICLE 8: WITH RESPECT TO PARA (B), WE SHARE FRG CONCERN THAT PRO FORMA PROSECUTION IN THIRD STATE COULD BAR EXTRADITION BETWEEN US AND FRG, BUT WE BELIEVE GENERALLY DESIRABLE POLICY REFLECTED IN THIS PROVISION OUTWEIGHS SUCH POSSIBILITY. PROBLEM CITED BY FRG MIGHT BE LESSENNED BY ADDITION OF WORD "SPECIFIC" BEFORE "OFFENSE".

9. ARTICLE 14: FRG SUGGESTION OF SUBSTITUTING "JUDGMENT" FOR "DETERMINATION" IN LINE 2 OF PARA (4) IS ACCEPTABLE.

10. ARTICLE 16: IN VIEW OF GAO AND OTHER CRITICISM OF INTERPOL, WE BELIEVE IT IS EVEN MORE IMPORTANT THAN BEFORE  
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TO EXCLUDE INTERPOL AS CHANNEL FOR PROVISIONAL ARREST. WITH RESPECT TO FRG CHANGE IN PARA 5, THIS LANGUAGE IS ACCEPTABLE.

11. ARTICLE 17: NO OBJECTION.

12. ARTICLE 19: THIS IS DIFFICULT ONE. JUSTICE DEPARTMENT SAYS IT IS PREPARED TO PROCESS EXTRADITION REQUEST IMMEDIATELY EVEN THOUGH ACCUSED MAY HAVE LONG SENTENCE TO SERVE BEFORE SURRENDER. STATE CONTINUES TO BELIEVE THAT GENERALLY IT IS BETTER TO WAIT. WITH NEW ADMINISTRATION, WE HAVE CASES BOTH WAYS: ACCUSED SEEKING THAT STATE REOPEN DECISION MADE BY PREVIOUS SECRETARY, AND PREVIOUS DECISION HAVING TO BE RECONFIRMED IN CASE WHERE TWO FUGITIVES COVERED BY SAME WARRANT BUT ONLY ONE SURRENDERED. IN VIEW OF JUSTICE AND FRG VIEWS ON THIS, HOWEVER, WE PREPARED TO SUBSTITUTE FOLLOWING:

"THE REQUESTED PARTY MAY, AFTER A DECISION ON THE REQUEST HAS BEEN RENDERED BY A COURT OF COMPETENT JURISDICTION, DEFER THE SURRENDER OF THE PERSON WHOSE EXTRADITION IS REQUESTED, WHEN THAT PERSON IS BEING PROCEEDED AGAINST OR IS SERVING A SENTENCE IN THE TERRITORY OF THE REQUESTED PARTY FOR A DIFFERENT OFFENSE, UNTIL THE CONCLUSION OF THE PROCEEDINGS AND THE FULL EXECUTION OF ANY PUNISHMENT HE MAY BE OR MAY HAVE BEEN AWARDED."

13. ARTICLE 21: NO OBJECTION TO REDRAFT OF PARA (3) AS SET FORTH PAGE 13 A-443, WITH CLARIFICATION FROM PAGE 16. OTHER THREE PREFERENCES OF FRG NOT ACCEPTABLE FOR REASONS

ENUNCIATED BY PFUND AND UNNECESSARY COMPLICATIONS OF TRY-  
ING TO ADMINISTER THEM.

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14. ARTICLE 24: NO OBJECTION TO REVISED TEXT.

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15. ARTICLE 25: WE WITHDRAW CHANGES DISCUSSED BONN 5130  
AND STATE 068079 AND ACCEPT FRG CHANGE IN PARA 4(B).

16. ARTICLE 28: ACCEPT FRG CHANGE.

17. ARTICLE 29: WE ACCEPT FRG PROPOSAL.

18. ARTICLE 32: DOES EMBASSY BONN HAVE A PLAN FOR  
OBTAINING THE ADDITIONAL INFORMATION NEEDED TO RESOLVE  
THE PROBLEM OF THE BERLIN CLAUSE? WE HAVE HAD NO REACTION  
FROM BERLIN.

19. ARTICLE 33: WE ACCEPT FRG PROPOSAL AS SET FORTH IN  
BONN 07148.

20. EXPEDITED EXTRADITION: INSERTION OF NEW ARTICLE AS  
PROPOSED BY FRG TO FOLLOW ARTICLE 17 IS ACCEPTABLE, EXCEPT  
FOR PHRASE "IS NOT MANIFESTLY, LEGALLY INADMISSIBLE"  
WHICH HAS NO MEANING IN OUR LEGAL TERMINOLOGY. SUGGEST  
SUBSTITUTING "IS NOT PREVENTED BY THE LAWS OF THE  
REQUESTED STATE."

21. APPENDIX: WE ACCEPT REVISED TEXT OF OFFENSE 25.  
PFUND EXPLANATION OF OFFENSE 33 IS CORRECT.  
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## Message Attributes

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**Type:** TE  
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